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NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT

Author:	Davila, Brittany
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Co-Counsel:	
Counsel LSA(s):	
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LPS NPDES

LOZEAU DRURY LLP
T: 510.836.4200
F: 510.836.4205
410 12th Street, Suite 250
Oakland, Ca 94607
www.lozeaudrury.com
doug@lozeaudrury.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DEPT. OF JUSTICE
ENVIRONMENT DIVISION
17 JUN 20 P 3:3

June 13, 2017

Robert Raber, President
Randy Alexander, Maintenance Manager
Johana Bryant, QISP
Imperial Pipe Services, LLC
12375 Brown Avenue
Riverside, CA 92509

VIA FIRST CLASS MAIL

Jerry A. Witkow
Registered Agent for Service of Process for Imperial Pipe Services, LLC
1666 20th Street, Ste. 100
Santa Monica, CA 90404

Re: Notice of Violations and Intent to File Suit under the Federal Water Pollution Control Act

Dear Mr. Raber, Mr. Alexander, and Ms. Bryant.:

I am writing on behalf of Center for Community Action and Environmental Justice ("CCAEJ") in regard to violations of the Clean Water Act (the "Act") that CCAEJ believes are occurring at Imperial Pipe Services, LLC's industrial facility located at 12375 Brown Avenue in Riverside, California ("Facility"). CCAEJ is a non-profit public benefit corporation dedicated to working with communities to advocate for environmental justice and pollution prevention. CCAEJ has members living in the community adjacent to the Facility and the Santa Ana River Watershed. CCAEJ and its members are deeply concerned with protecting the environment in and around their communities, including the Santa Ana River Watershed. This letter is being sent to Imperial Pipe Services, LLC; Robert Raber; Randy Alexander; and Johana Bryant as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "Imperial Pipe").

This letter addresses Imperial Pipe's unlawful discharge of pollutants from the Facility

into channels that flow into the Santa Ana River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2014-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CCAEJ refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." The WDID identification number for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Santa Ana Region ("Regional Board") is 8 361023682. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CCAEJ hereby places Imperial Pipe on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CCAEJ intends to file suit in federal court against Imperial Pipe under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

In its Notice of Intent to Comply with the Terms of the General Permit ("NOI"), Imperial Pipe certifies that the Facility is classified under SIC code 3317. The Facility collects and discharges storm water from its 20-acre industrial site through at least five outfalls. On information and belief, CCAEJ alleges the outfall contains storm water that is commingled with runoff from the Facility from areas where industrial processes occur. On information and belief, CCAEJ alleges that the outfall discharges to channels that empty into Reach 4 of the Santa Ana River.

The Regional Board has identified beneficial uses of the Santa Ana River and established water quality standards for it and its tributaries in the "Water Quality Control Plan for the Santa Ana River Basin (Region 8)," generally referred to as the Basin Plan. *See* http://www.swrcb.ca.gov/rwqcb8/water_issues/programs/basin_plan/index.shtml. The beneficial uses of these waters include, among others, groundwater recharge, water contact recreation, non-contact water recreation, wildlife habitat, warm freshwater habitat, and rare, threatened or endangered species.

The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." *Id.* at 3-3. Contact recreation use includes fishing and wading. *Id.*

The Basin Plan includes a narrative toxicity standard which states that "[t]oxic substances shall not be discharged at levels that will bioaccumulate in aquatic resources to levels which are harmful to human health." *Id.* at 4-20. The Basin Plan includes a narrative oil and grease standard which states that "[w]aste discharges shall not result in deposition of oil, grease, wax, or other material in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses." *Id.* at 4-14. The Basin Plan includes a narrative suspended and settleable solids standard which states that "Inland surface waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses..." *Id.* at 4-16. The Basin Plan provides that "[t]he pH of inland surface waters shall not be raised above 8.5 or depressed below 6.5..." *Id.* at 4-18. The Basin Plan contains a narrative floatables standard which states that '[w]aste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses." *Id.* at 4-10. The Basin Plan contains a narrative color standard which states that "[w]aste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affect beneficial uses." *Id.* at 4-10. The Basin Plan contains a turbidity standard which states that "[a]ll inland surface waters of the region shall be free of changes in turbidity which adversely affect beneficial uses." *Id.* at 4-21.

The EPA 303(d) List of Water Quality Limited Segments lists Reach 4 of the Santa Ana River as impaired for pathogens. *See* http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml. Reach 3 of the Santa Ana River is impaired for copper, lead, and pathogens.

The EPA has adopted a freshwater numeric water quality standard for zinc of 0.120 mg/L (Criteria Maximum Concentration – "CMC"). 65 Fed.Reg. 31712 (May 18, 2000) ("California Toxics Rule" or "CTR").[1]

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT").[2] The following benchmarks have been established for pollutants discharged by Imperial Pipe: pH

[1] The value for zinc is also hardness dependent, and correspond to a total hardness of 100-125 mg/L, which is the default listing in the California Toxics Rule.
[2] The Benchmark Values can be found at:
http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

– 6.0 - 9.0 standard units ("s.u."); total suspended solids ("TSS") – 100 mg/L; oil and grease ("O&G") – 15 mg/L; zinc – 0.26 mg/L; aluminum – 0.75 mg/L; and iron – 1.0 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels ("NALs"). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; zinc – 0.26 mg/L; aluminum – 0.75 mg/L; and iron – 1.0 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and oil & grease ("O&G") – 25 mg/L.

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit

Imperial Pipe has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of

the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

Imperial Pipe has discharged and continues to discharge storm water with unacceptable levels of pH, TSS, O&G, aluminum, zinc, and iron in violation of the General Permit. Imperial Pipe's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained concentrations of zinc and in excess of the applicable numerical water quality standard established by the EPA, measurement of pH in excess of the applicable range prescribed by the Basin Plan, and observations of pollutant in violation of the applicable narrative water quality standards established in the Basin Plan. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

Date	Parameter	**Observed Concentration / Condition**	**CTR value / Basin Plan Water Quality Objective**	**Outfall (as identified by the Facility)**
1/19/17	pH	9.1 s.u.	6.5 – 8.5 s.u.	#1
1/19/17	pH	8.9 s.u.	6.5 – 8.5 s.u.	#3
1/19/17	pH	8.8 s.u.	6.5 – 8.5 s.u.	#5
1/9/17	pH	9.2 s.u.	6.5 – 8.5 s.u.	#1
1/9/17	pH	9 s.u.	6.5 – 8.5 s.u.	#3
1/9/17	pH	8.8 s.u.	6.5 – 8.5 s.u.	#4
1/9/17	pH	9.8 s.u.	6.5 – 8.5 s.u.	#5
12/22/16	pH	9.2 s.u.	6.5 – 8.5 s.u.	#5
12/16/16	pH	9.3 s.u.	6.5 – 8.5 s.u.	#1
12/16/16	pH	9 s.u.	6.5 – 8.5 s.u.	#3
12/16/16	pH	9.4 s.u.	6.5 – 8.5 s.u.	#5
9/15/15	pH	8.74 s.u.	6.5 – 8.5 s.u.	DP3
9/15/15	pH	9.5 s.u.	6.5 – 8.5 s.u.	DP5
2/23/15	pH	9.73 s.u.	6.5 – 8.5 s.u.	Southeast
12/2/14	pH	10.1 s.u.	6.5 – 8.5 s.u.	NE
11/21/13	pH	8.97 s.u.	6.5 – 8.5 s.u.	DP4
11/21/13	pH	8.59 s.u.	6.5 – 8.5 s.u.	DP5
1/19/17	Zinc	0.287 mg/L	0.120 mg/L (CMC)	#5
12/22/16	Zinc	0.257 mg/L	0.120 mg/L (CMC)	#3

12/16/16	Zinc	0.154 mg/L	0.120 mg/L (CMC)	#1
3/7/16	Zinc	0.15 mg/L	0.120 mg/L (CMC)	DP3
1/5/16	Zinc	0.14 mg/L	0.120 mg/L (CMC)	DP1
1/5/16	Zinc	0.14 mg/L	0.120 mg/L (CMC)	DP4
1/5/16	Zinc	0.15 mg/L	0.120 mg/L (CMC)	DP5
2/23/15	Zinc	0.66 mg/L	0.120 mg/L (CMC)	South
12/2/14	Zinc	0.23 mg/L	0.120 mg/L (CMC)	East
12/2/14	Zinc	0.18 mg/L	0.120 mg/L (CMC)	West
2/28/14	Zinc	0.47 mg/L	0.120 mg/L (CMC)	DP1
2/27/14	Zinc	6.5 mg/L	0.120 mg/L (CMC)	DP3
11/21/13	Zinc	0.6 mg/L	0.120 mg/L (CMC)	DP2
11/21/13	Zinc	0.23 mg/L	0.120 mg/L (CMC)	DP5
1/19/17	Narrative	TSS/Dirt	Suspended solids	#1
1/19/17	Narrative	TSS/Dirt	Suspended solids	#3
1/19/17	Narrative	TSS/Dirt	Suspended solids	#5
1/9/17	Narrative	Suspended solids	Suspended solids	#1
1/9/17	Narrative	Brownish solids	Suspended solids; Discoloration	#3
1/9/17	Narrative	Suspended solids	Suspended solids	#4
1/9/17	Narrative	Foggy brown; Suspended solids	Suspended solids; Discoloration	#5
12/22/16	Narrative	TSS	Suspended solids	#1
12/22/16	Narrative	TSS	Suspended solids	#3
12/22/16	Narrative	TSS	Suspended solids	#5
12/16/16	Narrative	Suspended solids	Suspended solids	#1
12/16/16	Narrative	Suspended solids	Suspended solids	#3
12/16/16	Narrative	Suspended solids	Suspended solids	#5
5/14/15	Narrative	Cloudy	Suspended solids	N East
5/14/15	Narrative	Cloudy	Suspended solids	East
5/14/15	Narrative	Cloudy	Suspended solids	South East
5/14/15	Narrative	Cloudy	Suspended solids	West
2/23/15	Narrative	Cloudy	Suspended solids	N East
2/23/15	Narrative	Cloudy	Suspended solids	East
2/23/15	Narrative	Cloudy	Suspended solids	South East
2/23/15	Narrative	Cloudy	Suspended solids	West
12/2/14	Narrative	Cloudy	Suspended solids	NE
12/2/14	Narrative	Cloudy	Suspended solids	East
12/2/14	Narrative	Cloudy	Suspended solids	SE
12/2/14	Narrative	Cloudy	Suspended solids	Southwest
2/28/14	Narrative	High turbidity	Turbidity	Northeast
2/28/14	Narrative	High turbidity	Turbidity	South

2/27/14	Narrative	High turbidity; Oily sheen	Turbidity; Sheen	East
2/27/14	Narrative	High turbidity; Oily sheen	Turbidity; Sheen	West
2/27/14	Narrative	High turbidity	Turbidity	Southeast
11/21/13	Narrative	Brown color	Discoloration	East
11/21/13	Narrative	Brown color	Discoloration	South
11/21/13	Narrative	Brown color	Discoloration	West

The information in the above table reflects data gathered from Imperial Pipe's self-monitoring during the 2012-2013, 2013-2014, 2014-2015 wet seasons, as well as the 2015-2016 and 2016-2017 reporting years. CCAEJ alleges that since at least June 13, 2012, and continuing through today, Imperial Pipe has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- pH – 6.5 – 8.5 s.u. (Basin Plan at 4-18)
- Zinc – 0.120 mg/L (CMC)
- Sheen – Waste discharges shall not result in deposition of oil, grease, wax, or other material in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses. (Basin Plan at 4-14)
- Suspended Solids – Inland surface waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses. (Basin Plan at 4-16)
- Discoloration – Waste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affect beneficial uses. (Basin Plan at 4-10)
- Turbidity – All inland surface waters of the region shall be free of changes in turbidity which adversely affect beneficial uses. (Basin Plan at 4-20)

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Date	Parameter	Observed Concentration	EPA Benchmark Value / NAL	Outfall (as identified by the Facility)
1/19/17	pH	9.1 s.u.	6.0 – 9.0 s.u. (instantaneous)	#1
1/9/17	pH	9.2 s.u.	6.0 – 9.0 s.u. (instantaneous)	#1
1/9/17	pH	9.8 s.u.	6.0 – 9.0 s.u. (instantaneous)	#5
12/22/16	pH	9.2 s.u.	6.0 – 9.0 s.u. (instantaneous)	#5
12/16/16	pH	9.3 s.u.[3]	6.0 – 9.0 s.u. (instantaneous)	#1
12/16/16	pH	9.4 s.u.	6.0 – 9.0 s.u. (instantaneous)	#5
9/15/15	pH	9.5 s.u.	6.0 – 9.0 s.u. (instantaneous)	DP5
2/23/15	pH	9.73 s.u.	6.0 – 9.0 s.u. (instantaneous)	Southeast
12/2/14	pH	10.1 s.u.	6.0 – 9.0 s.u. (instantaneous)	NE
1/9/17	Total Suspended Solids	131 mg/L	100 mg/L (annual)	#5
12/22/16	Total Suspended Solids	131 mg/L	100 mg/L (annual)	#3
12/16/16	Total Suspended Solids	194 mg/L	100 mg/L (annual)	#1
12/16/16	Total Suspended Solids	205 mg/L	100 mg/L (annual)	#5
2015-2016 Reporting Year	Total Suspended Solids	990 mg/L[4]	100 mg/L (annual)	All discharge points
3/7/16	Total Suspended Solids	140 mg/L	100 mg/L (annual)	DP1
3/7/16	Total Suspended Solids	250 mg/L	100 mg/L (annual)	DP3

[3] This value represents the second measurement of pH from storm water discharges from the Facility during the 2016-2017 reporting year that is in excess of the instantaneous NAL for pH of 6.0 – 9.0.

[4] This value represents the average of all TSS measurements from storm water discharges from the Facility during the 2015-2016 reporting year and is higher than 100 mg/L, the annual NAL for TSS.

3/7/16	Total Suspended Solids	480 mg/L	100 mg/L (annual) / 400 mg/L (instantaneous)	DP4
3/7/16	Total Suspended Solids	740 mg/L	100 mg/L (annual) / 400 mg/L (instantaneous)	DP5
1/5/16	Total Suspended Solids	260 mg/L	100 mg/L (annual)	DP1
1/5/16	Total Suspended Solids	240 mg/L	100 mg/L (annual)	DP3
1/5/16	Total Suspended Solids	780 mg/L	100 mg/L (annual) / 400 mg/L (instantaneous)	DP4
1/5/16	Total Suspended Solids	480 mg/L	100 mg/L (annual) / 400 mg/L (instantaneous)	DP5
9/15/15	Total Suspended Solids	1,800 mg/L	100 mg/L (annual) / 400 mg/L (instantaneous)	DP1
9/15/15	Total Suspended Solids	6,300 mg/L[5]	100 mg/L (annual) / 400 mg/L (instantaneous)	DP2
9/15/15	Total Suspended Solids	640 mg/L	100 mg/L (annual) / 400 mg/L (instantaneous)	DP3
9/15/15	Total Suspended Solids	400 mg/L	100 mg/L (annual) / 400 mg/L (instantaneous)	DP4
9/15/15	Total Suspended Solids	360 mg/L	100 mg/L (annual) / 400 mg/L (instantaneous)	DP5

[5] This value represents the second measurement of TSS from storm water discharges from the Facility during the 2015-2016 reporting year that is in excess of the instantaneous NAL for TSS of 400 mg/L.

2/23/15	Total Suspended Solids	130 mg/L	100 mg/L	Southeast
2/23/15	Total Suspended Solids	450 mg/L	100 mg/L	South
2/23/15	Total Suspended Solids	160 mg/L	100 mg/L	West
12/2/14	Total Suspended Solids	160 mg/L	100 mg/L	East
12/2/14	Total Suspended Solids	490 mg/L	100 mg/L	NE
12/2/14	Total Suspended Solids	190 mg/L	100 mg/L	West
2/28/14	Total Suspended Solids	2,700 mg/L	100 mg/L	DP1
2/28/14	Total Suspended Solids	120 mg/L	100 mg/L	DP4
2/27/14	Total Suspended Solids	2,700 mg/L	100 mg/L	DP3
11/21/13	Total Suspended Solids	356 mg/L	100 mg/L	DP2
11/21/13	Total Suspended Solids	136 mg/L	100 mg/L	DP4
11/21/13	Total Suspended Solids	148 mg/L	100 mg/L	DP5
1/19/17	Oil & Grease	20.6 mg/L	15 mg/L (annual)	#5
1/19/17	Zinc	0.287 mg/L	0.26 mg/L (annual)	#5
2/23/15	Zinc	0.66 mg/L	0.26 mg/L	South
2/28/14	Zinc	0.47 mg/L	0.26 mg/L	DP1
2/27/14	Zinc	6.5 mg/L	0.26 mg/L	DP3
11/21/13	Zinc	0.6 mg/L	0.26 mg/L	DP2
2016-2017 Reporting Year	Aluminum	4.7 mg/L[6]	0.75 mg/L (annual)	All discharge points
1/19/17	Aluminum	1.95 mg/L	0.75 mg/L (annual)	#1
1/19/17	Aluminum	0.952 mg/L	0.75 mg/L (annual)	#3
1/19/17	Aluminum	1.32 mg/L	0.75 mg/L (annual)	#5
1/9/17	Aluminum	2.51 mg/L	0.75 mg/L (annual)	#1
1/9/17	Aluminum	2.5 mg/L	0.75 mg/L (annual)	#3
1/9/17	Aluminum	3.5 mg/L	0.75 mg/L (annual)	#4
1/9/17	Aluminum	8.41 mg/L	0.75 mg/L (annual)	#5
12/22/16	Aluminum	1.23 mg/L	0.75 mg/L (annual)	#1

[6] This value represents the average of all aluminum measurements from storm water discharges from the Facility during the 2016-2017 reporting year and is higher than 0.75 mg/L, the annual NAL for aluminum.

12/22/16	Aluminum	10.9 mg/L	0.75 mg/L (annual)	#3
12/22/16	Aluminum	5.93 mg/L	0.75 mg/L (annual)	#5
12/16/16	Aluminum	6.63 mg/L	0.75 mg/L (annual)	#1
12/16/16	Aluminum	3.51 mg/L	0.75 mg/L (annual)	#3
12/16/16	Aluminum	11.2 mg/L	0.75 mg/L (annual)	#5
2015-2016 Reporting Year	Aluminum	13.6 mg/L[7]	0.75 mg/L (annual)	All discharge points
3/7/16	Aluminum	4.8 mg/L	0.75 mg/L (annual)	DP1
3/7/16	Aluminum	8.1 mg/L	0.75 mg/L (annual)	DP3
3/7/16	Aluminum	20 mg/L	0.75 mg/L (annual)	DP4
3/7/16	Aluminum	16 mg/L	0.75 mg/L (annual)	DP5
1/5/16	Aluminum	6.3 mg/L	0.75 mg/L (annual)	DP1
1/5/16	Aluminum	7.4 mg/L	0.75 mg/L (annual)	DP3
1/5/16	Aluminum	38 mg/L	0.75 mg/L (annual)	DP4
1/5/16	Aluminum	38 mg/L	0.75 mg/L (annual)	DP5
9/15/15	Aluminum	4 mg/L	0.75 mg/L (annual)	DP1
9/15/15	Aluminum	1.2 mg/L	0.75 mg/L (annual)	DP2
9/15/15	Aluminum	1.4 mg/L	0.75 mg/L (annual)	DP3
9/15/15	Aluminum	31 mg/L	0.75 mg/L (annual)	DP5
2/23/15	Aluminum	6.2 mg/L	0.75 mg/L	East
2/23/15	Aluminum	2.3 mg/L	0.75 mg/L	Southeast

[7] This value represents the average of all aluminum measurements from storm water discharges from the Facility during the 2015-2016 reporting year and is higher than 0.75 mg/L, the annual NAL for aluminum.

2/23/15	Aluminum	25 mg/L	0.75 mg/L	South
2/23/15	Aluminum	5.8 mg/L	0.75 mg/L	West
12/2/14	Aluminum	7.9 mg/L	0.75 mg/L	East
12/2/14	Aluminum	3.8 mg/L	0.75 mg/L	NE
12/2/14	Aluminum	3.9 mg/L	0.75 mg/L	South
12/2/14	Aluminum	9.6 mg/L	0.75 mg/L	West
2/28/14	Aluminum	41 mg/L	0.75 mg/L	DP1
2/28/14	Aluminum	9.2 mg/L	0.75 mg/L	DP4
2/27/14	Aluminum	1 mg/L	0.75 mg/L	DP2
2/27/14	Aluminum	240 mg/L	0.75 mg/L	DP3
2/27/14	Aluminum	2.2 mg/L	0.75 mg/L	DP5
11/21/13	Aluminum	14 mg/L	0.75 mg/L	DP2
11/21/13	Aluminum	2 mg/L	0.75 mg/L	DP4
11/21/13	Aluminum	19 mg/L	0.75 mg/L	DP5
2015-2016 Reporting Year	Iron	9.7 mg/L[8]	1.0 mg/L	All discharge points
3/7/16	Iron	6.8 mg/L	1.0 mg/L (annual)	DP1
3/7/16	Iron	14 mg/L	1.0 mg/L (annual)	DP3
3/7/16	Iron	13 mg/L	1.0 mg/L (annual)	DP4
3/7/16	Iron	14 mg/L	1.0 mg/L (annual)	DP5
1/5/16	Iron	9.8 mg/L	1.0 mg/L (annual)	DP1
1/5/16	Iron	10 mg/L	1.0 mg/L (annual)	DP3
1/5/16	Iron	31 mg/L	1.0 mg/L (annual)	DP4
1/5/16	Iron	23 mg/L	1.0 mg/L (annual)	DP5
9/15/15	Iron	2.5 mg/L	1.0 mg/L (annual)	DP1
9/15/15	Iron	1.1 mg/L	1.0 mg/L (annual)	DP3

[8] This value represents the average of all iron measurements from storm water discharges from the Facility during the 2015-2016 reporting year and is higher than 1.0 mg/L, the annual NAL for iron.

The information in the above table reflects data gathered from Imperial Pipe's self-monitoring during the 2013-2014 and 2014-2015 wet seasons, as well as the 2015-2016 and 2016-2017 reporting years. Further, CCAEJ notes that for the 2015-2016 reporting year, the Facility exceeded the annual NALs for TSS, aluminum, and iron, as well as the instantaneous NAL for TSS. For the 2016-2017 reporting year, the Facility exceeded the instantaneous NAL for pH and the annual NAL for aluminum. CCAEJ alleges that since at least June 13, 2012, Imperial Pipe has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NALs for pH, TSS, O&G, zinc, aluminum, and iron.

CCAEJ's investigation, including its review of Imperial Pipe's Storm Water Pollution Prevention Plan ("SWPPP"), Imperial Pipe's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, and EPA benchmark values and NALs, indicates that Imperial Pipe has not implemented BAT and BCT at the Facility for its discharges of pH, TSS, O&G, aluminum, zinc, iron, and potentially other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. Imperial Pipe was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, Imperial Pipe is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CCAEJ alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since June 13, 2012, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CCAEJ alleges that Imperial Pipe has discharged storm water containing impermissible and unauthorized levels of pH, TSS, O&G, aluminum, zinc, and iron in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.[9]

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of pH, TSS, O&G, aluminum, zinc, iron, and storm water associated with industrial activity in violation of Section

[9] The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station in Riverside located approximately 5.2 miles from the Facility. Rain data was accessed from the National Oceanic and Atmospheric Administration at https://www.ncdc.noaa.gov/cdo-web/. (Last accessed on June 13, 2017).

301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Imperial Pipe is subject to penalties for violations of the General Permit and the Act since June 13, 2012.

Further, CCAEJ puts Imperial Pipe on notice that 2015 Permit Effluent Limitation V(A) is a separate, independent requirement with which Imperial Pipe must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Permit's Effluent Limitations, including Imperial Pipe's obligation to have installed BAT and BCT at the Facility. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.[10] Finally, even though Imperial Pipe submitted an Exceedance Response Action Plan pursuant to Section XII of the 2015 Permit, the violations of Effluent Limitation V(A) described in this Notice Letter are ongoing.

B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility.

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. See 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. See 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that best management practices ("BMPs") are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

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[10] "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. See 2015 Permit, Section XII.

Under the 1997 Permit, facilities must analyze storm water samples for "toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." 1997 Permit, Section B(5)(c)(ii). Under the 2015 Permit, facilities must analyze storm water samples for "[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment." 2015 Permit, Section XI(B)(6)(c).

Based on the Facility's SWPPP alone, it is clear that Imperial Pipe must analyze its storm water discharges for iron. Table 9 lists iron as a parameter and constituent for sampling based on the Facility Assessment. Section 2.1 notes that "[i]ron (Fe) is added to the list of sampling parameters due to the cement batch plants that operate on-site."[11] Table 8 describes the necessary sampling containers required to analyze storm water discharges for iron. Table 1 lists iron as a potential pollutant source from four areas of the Facility. Further, during the 2015-2016 reporting year, Imperial Pipe analyzed all storm water discharges from the Facility for iron. Nearly all of those results exceeded the annual NAL for iron, usually by an order of magnitude.

However, during the 2016-2017 wet season, Imperial Pipe failed to analyze any of its storm water discharges for iron. With each sampling event, Imperial Pipe failed to request that the laboratory analyze the sample for iron. In addition, Imperial Pipe only sampled for iron during the 2015-2016 reporting year, failing to sample for iron in any of the previous wet seasons.

These violations are ongoing. Imperial Pipe is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since at least June 13, 2012.

C. Failure to Complete Annual Comprehensive Site Compliance Evaluation

The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). (Section B(14)). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to CCAEJ indicates that Imperial Pipe has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Facility's ACSCE Reports provide a sufficient explanation of the Facility's failure to take steps

[11] On information and belief, CCAEJ that an SIC Code of 327X would apply to the Facility because of the cement batch plant operations.

to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. *See* 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). The failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, Imperial Pipe has not proposed any BMPs that adequately respond to EPA benchmark and water quality standard exceedances, in violation of the General Permit.

CCAEJ puts Imperial Pipe on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and the CWA. Imperial Pipe is in ongoing violation of Section XV of the 2015 Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. Imperial Pipe is subject to civil penalties for all violations of the CWA occurring since at least June 13, 2012.

D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. See 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit, Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as

the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations and receiving water limitations. *See* 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. *See* 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. *See* 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. *See* 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. *See* 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. *See* 2015 Permit § X(H)(4), (5).

Section X(G)(2) of the 2015 Permit requires that a SWPPP contain an assessment of potential pollutant sources. This requires, *inter alia*, the pollutant likely to be present in industrial storm water discharges as well as the approximate quantity of each industrial material handled.

Despite these clear BMP requirements, Imperial Pipe has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP.

The SWPPP fails to comply with the requirements of Section X(G) of the 2015 Permit, failing to list pH as a potential pollutant from any locations at the Facility, and also failing to provide the quantities of each industrial material handled.

The SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to include required advanced BMPs. The SWPPP fails to describe any efforts to implement and maintain minimum BMPs.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded EPA benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges.

Despite these exceedances, Imperial Pipe has failed to sufficiently update and revise the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

CCAEJ puts Imperial Pipe on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CCAEJ will include additional violations as information and data become available. Imperial Pipe is subject to civil penalties for all violations of the CWA occurring since June 13, 2012.

III. Persons Responsible for the Violations.

CCAEJ puts Imperial Pipe Services, LLC, Robert Raber, Randy Alexander, and Johana Bryant on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CCAEJ puts Imperial Pipe Services, LLC, Robert Raber, Randy Alexander, and Johana Bryant on notice that it intends to include those subsequently identified persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of the Center for Community Action and Environmental Justice is as follows:

Penny Newman
Executive Director
Center for Community Action and Environmental Justice
P.O. Box 33124
Jurupa Valley, CA 92519
Tel. (951) 360-8451

V. Counsel.

CCAEJ has retained legal counsel to represent it in this matter. Please direct all communications to:

Douglas J. Chermak
Michael R. Lozeau
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, California 94607
Tel. (510) 836-4200
doug@lozeaudrury.com

michael@lozeaudrury.com

VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Imperial Pipe to a penalty of up to $37,500 per day per violation for all violations occurring since October 28, 2011 up to and including November 2, 2015, and up to $52,414 for violations occurring after November 2, 2015. In addition to civil penalties, CCAEJ will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CCAEJ believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CCAEJ intends to file a citizen suit under Section 505(a) of the Act against Imperial Pipe and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CCAEJ would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CCAEJ suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CCAEJ does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

Douglas J. Chermak
Lozeau Drury LLP
Attorneys for Center for Community Action and Environmental Justice

SERVICE LIST – via certified mail

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Alexis Strauss, Acting Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Kurt V. Berchtold, Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

ATTACHMENT A

Rain Dates, Imperial Pipe Services, LLC, Riverside, CA

	12/17/2014	4/9/2016
10/11/2012	12/30/2014	4/25/2016
11/10/2012	1/11/2015	5/6/2016
11/30/2012	1/26/2015	10/24/2016
12/4/2012	2/22/2015	10/25/2016
12/13/2012	2/23/2015	11/21/2016
12/24/2012	3/1/2015	11/26/2016
12/29/2012	3/2/2015	11/27/2016
1/24/2013	4/25/2015	12/16/2016
1/25/2013	5/8/2015	12/22/2016
2/8/2013	5/15/2015	12/24/2016
2/20/2013	7/1/2015	12/31/2016
3/8/2013	7/18/2015	1/5/2017
7/20/2013	7/19/2015	1/9/2017
8/29/2013	7/20/2015	1/11/2017
10/9/2013	9/9/2015	1/12/2017
11/21/2013	9/15/2015	1/19/2017
12/7/2013	10/4/2015	1/20/2017
12/19/2013	10/5/2015	1/22/2017
2/6/2014	11/4/2015	1/23/2017
2/27/2014	11/25/2015	2/6/2017
2/28/2014	12/14/2015	2/7/2017
3/1/2014	12/19/2015	2/11/2017
3/2/2014	12/22/2015	2/17/2017
4/26/2014	1/5/2016	2/18/2017
8/20/2014	1/6/2016	2/28/2017
9/7/2014	1/7/2016	3/22/2017
11/1/2014	1/31/2016	5/7/2017
12/2/2014	2/18/2016	
12/3/2014	3/6/2016	
12/4/2014	3/7/2016	
12/12/2014	3/11/2016	

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U.S. Department of Justice
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Washington, DC 20530-0001

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